

**KENTUCKY  
DEPARTMENT OF  
WORKERS CLAIMS**

**ANNUAL REPORT  
FISCAL YEAR  
1999-2000**

**Commonwealth of Kentucky  
Department of Workers Claims**

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**KENTUCKY  
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## **DEPARTMENT OF WORKERS CLAIMS**

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**ANNUAL REPORT FISCAL YEAR 1999-2000**

December 15, 2000

Dear Governor Patton:

Pursuant to KRS 342. 230 and KRS 342.435, I submit the Annual Report of the Department of Workers Claims for Fiscal Year 2000 which encompasses activities of the Department from July 1, 1999 through June 30, 2000. This Annual Report details steps taken by this agency in our quest to assure prompt delivery of statutory benefits in an efficient manner.

Data supports the conclusion that the 1996 reform (HB1, Extraordinary Session) together with a strong economy, and improved workplace safety have reduced the incidence of workplace injuries, the volume of litigated claims and the costs of disability. The Department estimates that in Fiscal Year 1996, Kentucky businesses expended \$1.1 billion to support the compensation program through insurance premium, self-insurance simulated premium and assessments. As of FY 2000, total annual program costs are approximately \$780 million, a reduction of 29%. This trend is remarkable in that the statewide payroll rose from \$42 billion in FY 1996 to approximately \$54 billion in FY 2000.

The downward spiral in compensation costs is not expected to continue into the succeeding fiscal year. Fierce competition among workers' compensation carriers for market share has subsided. Permanent partial disability benefits were enhanced by the General Assembly during the 2000 Regular Session in House Bill 992, as was the death benefit for workplace fatalities. And, the workers compensation program is significantly impacted by heightened costs for medical services.

Through its personnel and operating systems, the Department of Workers Claims stands equipped to continue to refine initiatives introduced in the past while meeting the inevitable challenges of the future in the volatile Kentucky workers' compensation environment.

It has been a distinct pleasure to serve; with thanks for your encouragement and support.

Respectfully submitted,



Walter W. Turner  
Commissioner  
Department of Workers Claims

## **DEPARTMENT OF WORKERS CLAIMS**

### **Department of Workers Claims MISSION**

Resourceful administration of Kentucky's Workers' Compensation program and equitable and expedient processing of claims.

### **PERFORMANCE OBJECTIVES**

- ◆ To assure prompt delivery of statutory benefits, including medical services and indemnity payments
- ◆ To provide timely and competent services to stakeholders
- ◆ To foster stakeholder knowledge of rights and responsibilities under the Workers' Compensation Act
- ◆ To encourage stakeholder involvement in the development of policy and delivery mechanisms
- ◆ To provide the public and policy makers with accurate and current indicators of program performance
- ◆ To anticipate changes in the program environment and respond appropriately

No individual in the United States shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, be excluded from participation in, or denied benefits of, or be subjected to discrimination under any program or activity under the jurisdiction of the Kentucky Labor Cabinet.

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This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.





***Walter W. Turner, Commissioner  
Department of Workers Claims***

Commissioner Turner graduated from the University of Kentucky and its College of Law. He was admitted to the bar in 1971 before the state and federal courts in Kentucky as well as the Sixth Circuit Court of Appeals. A member of the Kentucky and American Bar Associations, Mr. Turner engaged in general trial practice in eastern Kentucky for sixteen years concentrating upon legal matters associated with the coal mining and oil and gas industries. In 1988, Mr. Turner began serving as one of Kentucky's first full-time Administrative Law Judges. Four years later, he was appointed by Governor Brereton C. Jones to the Workers' Compensation Board. In June of 1994, Mr. Turner was appointed to serve as Commissioner of the Department of Workers Claims.



***Willie Hutcherson Lile, Deputy Commissioner  
Department of Workers Claims***

Deputy Commissioner Willie Lile received her Bachelor of Science in Psychology and Sociology from Eastern Kentucky University in 1978 and her Master of Public Affairs from Kentucky State University in 1982.

Ms. Lile began her career with state government in the Finance and Administration Cabinet's Bureau of Public Properties. In December 1979, she was named staff assistant to the Commissioner concentrating on budget and fiscal management. In 1981, Ms. Lile worked as a property analyst until October of 1986 when she was promoted to Manager of the Leasing Branch.

From 1990 until 1994, Ms. Lile served as Executive Director of the Department of Workers Claims Office of Administrative Services. In October 1994, she was appointed Deputy Commissioner of the Department of Workers Claims.

## **DEPARTMENT OF WORKERS CLAIMS**

### **FY 2000 Annual Fiscal Report**

Through technological advances and an attitude of working smarter, the Kentucky Department of Workers Claims has held its operational expenditures and the personnel compliment relatively constant over the past four years. For the most part, when budgetary increases have occurred, only slight upward adjustments have been made for cost of living increases. The following table reflects budgetary matters for fiscal year periods 1989 through 2000.

#### **DWC FISCAL HISTORY**

<b><u>FISCAL YEAR</u></b>	<b><u>PERSONNEL CAP</u></b>	<b><u>PERSONNEL ACTUAL</u></b>	<b><u>BUDGET ALLOTMENT</u></b> (\$)	<b><u>ACTUAL EXPENDITURES</u></b> (\$)	<b><u>DIFFERENCE</u></b> (\$)	<b><u>PERCENT of BUDGET EXPENDED</u></b>
1999-2000	268	207	15,637,000	12,387,288	(3,249,712)	79.2%
1998-1999	268	208	14,994,000	12,606,188	(2,387,812)	84.1%
1997-1998	272	227	15,182,500	12,588,527	(2,593,973)	82.9%
1996-1997	272	229	12,137,900	11,057,391	(1,080,509)	91.0%
1995-1996	207	138	9,822,200	9,479,970	(342,230)	96.5%
1994-1995	210	120	9,757,200	8,586,716	(1,170,484)	88.0%
1993-1994	167	159	7,860,000	7,337,688	(522,312)	93.4%
1992-1993	167	160	7,505,100	7,004,561	(500,539)	93.0%
1991-1992	153	150	6,901,600	6,497,815	(403,785)	94.0%
1990-1991	155	149	6,737,300	6,487,540	(249,760)	96.0%
1989-1990	139	136	5,695,100	5,295,835	(399,265)	93.0%
1988-1989	132	123	6,031,200	4,951,309	(1,079,891)	82.0%

Of the total 207 full time personnel employed by the department as of June 30, 2000, roughly 50% or 104 personnel were involved solely in the processing of benefit claims. Approximately 20 % or 41 personnel were assigned to data entry and other computer related services. Another 10 personnel or 3 % of the staff were involved in constituent services. The remaining 25 % or 52 personnel were involved in rehabilitation services, insurance compliance, legal services and administration.

The Department of Workers Claims functions in a fluid environment characterized by constant economic changes, technological advances and a volatile climate. These forces affect the ability of the agency to deliver expedient and efficient services to the constituency. Management strives to not only stay abreast of changes, but also to predict them whenever possible so that we may meet the unique challenge of Kentucky's workers' compensation program environment.

DWC has traditionally been challenged by the need to develop technological solutions for handling increased work loads while satisfying the demands for faster and more intensive services. Responding, the department has designed and implemented a state of the art computer image system that permits document scanning and provides immediate, multi-user access to the claims databases and the original claims documents. This system enhances performances of a wide range of DWC personnel including adjudicators, ombudsmen, researchers and claims administrators.

## **ANNUAL REPORT FISCAL YEAR 1999-2000**

Kentucky's Department of Workers Claims has been the nation's leader in rolling out electronic data interchange (EDI) for the efficient and expedient exchange of data to accommodate insurance compliance and reporting processes.

Our budget also contains resources necessary to replace computer technology, as existing units and software become obsolete. The Department has been able to maintain a three-year replacement schedule for all computer CPU units, controllers, servers and laptops. The increasing speed of processors and growing databases dictate a three-year replacement schedule in order for the agency to fully utilize its information system.

DWC is committed to continuing education for all personnel. Supervisors and line workers attend courses offered through the Government Services Center, state supported colleges and universities, the Kentucky Department of Information Systems, and various private computer technology training groups. Employees are also encouraged to take advantage of the Commonwealth's Tuition Assistance Program (TAP) in order to promote professional growth. This program pays for college level courses and employees are rewarded with salary enhancements upon completion of various phases of educational achievement. In addition, DWC encourages cross training of personnel in order to maintain a highly skilled professional staff literate in a wide range of workers' compensation issues.

Education for constituents and lawmakers is also of paramount importance to this agency. DWC's constituent services staff is made available for public speaking engagements, workers' compensation workshops and training sessions. This group routinely works with medical, insurance and legal entities in addition to legislative bodies and other interested parties in matters relative to workers' compensation. The Commissioner, the Workers' Compensation Board members and administrative law judges frequently serve as speakers at legal seminars and participate in regional and national workers' compensation associations.

In an attempt to identify emerging issues, the department constantly researches legislative changes at both the state and federal level. The agency takes pride in its active involvement with professional associations such as the International Association of Industrial Accident Boards and Commissions (IAIABC), the Southern Association of Industrial Accident Boards and Commissions (SAWCA), the National Association of Insurance Commissions (NAIC) and the National Council on Compensation Insurance (NCCI).

In order to promote greater diversity in the workplace, the Department of Workers Claims has instituted internal policies that support the Commonwealth's goal of hiring more minority personnel. This agency participates in the Minority Management Training Program administered by the Kentucky State University Governmental Services Center. In addition, a concerted effort has been made by the agency to promote women in management and to insure that wages paid to all personnel are fair and equitable. The Labor Cabinet, in which the Department of Workers Claims is administratively assigned for budget purposes, has set a goal of minority hiring at 7.51% of the workforce and has achieved a minority hiring level of 9.6% of the total workforce over the past two years.

## **DEPARTMENT OF WORKERS CLAIMS**

### **HISTORY**



Photo source: Hazard Kentucky and Perry County Photo History

The Commonwealth of Kentucky adopted a Workers' Compensation Act in 1916 which was actually a "reform" of the 1914 version that was found to be unconstitutional shortly after passage. Under the 1916 Act, employees were granted replacement income and medical benefits for disability arising from on-the-job accidents. Occupational disease coverage came much later in 1948. In exchange for furnishing workers' compensation benefits, employers were given immunity from employee common law damage suits for workplace injuries.

Over the past 84 years, Kentucky's workers' compensation program has undergone incremental changes generally marked by expansion of coverage and increases in the amount of benefits granted workers. Major statutory revisions have taken place in the last two decades, specifically during the legislative sessions of 1987 (Extraordinary), 1994, 1996 (Extraordinary) and 2000.

In 1988, the Department of Workers Claims (DWC) was created and charged statutorily with the primary responsibility of administering the workers' compensation program. Prior to 1994, the main function of the DWC was to adjudicate benefit entitlement disputes between employers and employees. Cost containment measures were adopted in 1994 with the passage of House Bill 928. Through that statute, the means of delivering industrial health care was altered, efforts to curtail the expansion of benefits began, and the administrative and adjudicative arms of the program were strengthened. Most of the governmental functions related to workers' compensation were consolidated in the Labor Cabinet and the role of the Commissioner as the chief administrator of the program was developed.

In the 1996 Special Session, the General Assembly again reconstructed the workers' compensation program with House Bill 1, adopted on December 12, 1996. This Act emphasized early administrative resolution of benefit disputes as opposed to litigative model claims processing of the past. Furthermore, the 1996 Act marked a shift towards fiscal responsibility and an attempt to downsize the annual program cost of \$1 billion paid by the Commonwealth's employers. In a bold move aimed at removing deficit spending from the program, HB1 prospectively eliminated Kentucky's subsequent injury fund (the Special Fund) which since 1946 had amassed a liability of \$2 billion which was only partially funded. Other belt tightening provisions of 1996 HB1 included:

## **ANNUAL REPORT FISCAL YEAR 1999-2000**

- 1) Offset of unemployment benefits against workers' compensation payments
- 2) Termination of workers' compensation income payment upon receipt of Social Security retirement benefits
- 3) More stringent medical criteria for coal workers' pneumoconiosis claims
- 4) Predictable permanent partial disability awards through greater reliance upon the American Medical Association Guidelines to Evaluation of Impairment
- 5) Lower caps on both plaintiff and defense attorneys fees
- 6) A system (arbitration) for expedited processing of claims
- 7) Elimination of the Workers' Compensation Board as a step in the adjudication process
- 8) Refinement of the definition of injury to require objective medical evidence
- 9) Narrowing of the opportunity to reopen a claim to four years

Over the next four years, many of the provisions of 1996 HB1 came under relentless attack before the courts, in the legislature and in the court of public opinion as well. The general charge was that HB1 erred on the conservative side by limiting employee access to benefits and the amount thereof. Strongest criticisms focused upon the mechanism for permanent partial disability determinations which relied heavily on medical impairment, and left little room for consideration of the impact of injury in light of the employee's job duties, age and education. Contests of 1996 HB1 provisions were largely rejected by the Kentucky Supreme Court and for three years, despite extensive hearings on workers' compensation issues, the General Assembly maintained a "wait and see" approach.

The 1996 Reform was itself "reformed" through House Bill 992 adopted during the 2000 Regular Session and effective July 14, 2000. Notable changes wrought by HB992 are:

- 1) Elimination of arbitration from the claims process
- 2) Reinstatement of the Workers' Compensation Board
- 3) Increase of the death benefit from \$25,000 to \$50,000
- 4) Increased allowance for permanent partial disability with recognition of age and education factors
- 5) Higher attorney fee caps
- 6) Raised penalties against employers for violation of safety regulations from 15% to 30% of benefits due
- 7) Softened reopening of time lines with elimination of two year waiting period

Attempts to lower medical eligibility criteria for coal workers' pneumoconiosis benefits, to further increase reopening opportunities, to heighten payments for new job training and change the Social Security termination provision to an offset were all rejected. These issues are likely to be revisited during the new short session of the General Assembly convening in January 2001.

## **DEPARTMENT OF WORKERS CLAIMS**



### **PROGRAM OVERVIEW** **Kentucky's Workers' Compensation Program**

Kentucky's Workers' Compensation Act provides benefits to employees injured in job-related accidents and to those who contract or develop diseases due to workplace exposure. Historically, workers' compensation has been described as a "trade-off" between labor and industry. In exchange for the protection that workers' compensation grants, employees surrender the right to sue employers in civil court for damages arising from workplace injuries.

Benefits include money payments for lost income, the expense of medical treatment and new job training. If an employee's death occurs as a result of the injury, a lump-sum payment of \$50,000 (for injuries occurring after July 13, 2000) is made to the employee's estate. Income benefits are also extended to the surviving spouse and dependents.

The General Assembly establishes rights and duties regarding workers' compensation through statutes found in Kentucky Revised Statutes, Chapter 342—the Workers' Compensation Act. The Department of Workers Claims (DWC) within the Labor Cabinet administers Kentucky's workers' compensation program. The Commissioner is appointed by the Governor to lead the DWC. He is empowered to adopt regulations that implement the law, such as those that guide the adjudication of claims and the delivery of medical and rehabilitation benefits.

Among DWC functions are the following:

- ◆ Provide information concerning benefits;
- ◆ Assist informal resolution of disputes;
- ◆ Maintain injury records and monitor program costs;
- ◆ Process and adjudicate claims;
- ◆ Enforce laws requiring employer coverage;
- ◆ Regulate self-insured employers;
- ◆ Implement strategies to improve carrier performance;
- ◆ Render program assessment to policy makers



## **WORKERS' COMPENSATION COVERAGE**

Most Kentucky employers are subject to the Workers' Compensation Act and must carry workers' compensation insurance either through purchase of a policy from an insurance carrier, by becoming self-insured or by joining a self-insurance group. The law imposes penalties on employers who fail to obtain coverage and non-complying businesses may be closed by court action.

Some employees are exempt from mandatory workers' compensation coverage. Farm workers and workers who are employed as domestic servants or employed by homeowners for residential maintenance and repair, members of certain religious sects and employees protected by federal laws are some of those exemptions. Those who voluntarily execute a waiver of workers' compensation protection are exempt from coverage; business partners who are owners of the business are not required to obtain coverage on themselves.

Whether a worker is an employee or an independent contractor is a frequently disputed issue in workers' compensation claims. The general test to determine this distinction usually is found in the following question: Does the worker have the right to control the details of the work?

Employee leasing corporations must register with the Department of Workers Claims and demonstrate that workers' compensation coverage has been secured for job sites where leased employees work. Temporary help service companies are deemed the employers of temporary employees and must secure workers' compensation insurance coverage.

Employees may reject coverage under the Workers' Compensation Act by signing and filing with the employer an Employee's Notice of Rejection of Workers' Compensation Act, commonly known as a Form 4 Waiver. By rejecting the Act, employees surrender benefits that may be due under the Workers' Compensation Act, but retain the right to sue employers for work-related injury or disease in civil court.

The law prohibits employers from requiring employees to sign a Form 4 Waiver as a condition of employment. Only waivers signed freely by the employee will be upheld.

## DEPARTMENT OF WORKERS CLAIMS

### RESOLUTION OF DISPUTES

When an employee is injured on the job, the employee notifies his/her employer of the injury as soon as possible. The employer, in turn, notifies its insurance carrier if the employer is not self-insured. This notification process alerts the employer and/or insurance carrier of its potential liability and the need to begin payments to the employee. Medical benefits are then frequently started as well as income benefits. So long as these benefits continue to be voluntarily paid, there may be no dispute or need for an employee to file a workers' compensation claim. In many instances, the injured worker and the employer reach an agreement which is formalized and approved by one of the administrative law judges at the Department.

In other instances, there may be a disagreement by either party on the amount of or entitlement to benefits. The employer may contest payments of these benefits, challenging whether the employee's condition is due to a work injury, challenging the extent of disability, or whether medical expenses are reasonable or necessary. The employee may also feel entitled to a larger award than the employer thinks is justified. Where there is a disagreement, either party may contact the ombudsmen or workers' compensation specialists for intervention. The primary mission of the DWC is to expeditiously resolve disputes as to entitlement to workers' compensation benefits. A toll free number **(1-800-554-8601)** is available to all parties for information and assistance in resolving these matters. Staff members contact the parties involved, help with the exchange of information or medical documents, and also engage all parties in discussions aimed at resolving the disagreement.

If the differences cannot be resolved either with the assistance of DWC staff or by the parties, litigation may ensue. In filing a claim, many workers retain an attorney, familiar with workers' compensation law, to handle the complexities of the adjudication process. An employee is not required to have an attorney to file a claim. However, employees choosing to represent themselves will be held to the same standards as members of the bar. For those workers who obtain an attorney, fees for representation are on a contingency basis and recovery of benefits is required before fees are payable.

#### **ATTORNEY FEES AWARDED DURING FY 2000**

	<b># Fees Approved</b>	<b>Total Fees Awarded</b>	<b>Average Fee</b>
<b>Plaintiff</b>	<b>4,403</b>	<b>\$12,978.841</b>	<b>\$2,947</b>
<b>Defense</b>	<b>7,057</b>	<b>\$9,892,037</b>	<b>\$1,401</b>

\*12/22/00



The Department of Workers Claims processes a variety of injury and occupational disease claims. To simplify the administrative procedure, several types of claim application forms are used; Form 101 for injuries, Form 102 for occupational diseases and Form 103 for hearing loss claims. These claim application forms contain basic information identifying the worker, employer and the nature of the incident producing the injury/disease and must be thoroughly completed, typed, and notarized, and filed with supporting medical documentation with the Department. Additional forms must also be completed and filed with the claim application: Form 104, Plaintiff's Employment History; Form 105, Plaintiff's Chronological Medical History; and Form 106, Medical Waiver and Consent. In occupational disease claims, the Form 115, Social Security Release Form is also required. Any of these forms are available by telephoning the Department of Workers Claims or can be downloaded from the agency's website:

**[dwc.state.ky.us](http://dwc.state.ky.us).**

Once a claim is filed, it is assigned to an adjudicator. Until April 2000 of this fiscal year, claims were initially assigned to an arbitrator. However, as a result of House Bill 992, arbitration was eliminated and initial claims were then assigned to an administrative law judge. These adjudicators have responsibility for overseeing all aspects of the claim including the introduction of evidence and ruling on all pleadings. If the claim is not settled, the adjudicator will render a decision on all uncontested issues. To assist in understanding how the administrative judicial process works, the Adjudication Timeline contained within this report outlines the steps involved.

## **DEPARTMENT OF WORKERS CLAIMS**

### **THE DEPARTMENT OF WORKERS CLAIMS Program Divisions Summary**

#### **Office of the Commissioner**

The Commissioner heads the Department, supervises its employees and carries out all the administrative functions of the agency, including promulgating regulations related to the workers' compensation program. Commissioner Walter W. Turner reports to the Governor, the Secretary of the Labor Cabinet and the General Assembly. Deputy Commissioner Willie Lile assists, serving as personnel and financial officer for DWC.

#### **Office of General Counsel**

The Office of General Counsel, headed by the Honorable Stephen B. Cox, provides legal services to DWC. Recurring activities of this office include issuing citations and prosecuting injunctive actions against employers not providing insurance coverage, investigating allegations of improper claims adjustment activities, presentation of unfair claims settlement practice complaints, analyzing open records requests, researching and drafting law analysis reports and conducting public hearings concerning workers' compensation issues.

#### **Office of Administrative Services**

The Office of Administrative Services is under the supervision of the Deputy Commissioner and provides the logistical support for the department. Its responsibilities include: purchasing supplies, providing maintenance and security for facilities and equipment, printing, mail services, securing leases of real property and coordinating fiscal activities with the Finance and Administration Cabinet.

#### **Workers' Compensation Board**

The Workers' Compensation Board is charged with the responsibility of deciding appeals from administrative law judges' (ALJs) opinions. It is comprised of three members, one of whom serves as Chair, the Honorable Dwight Lovan. Board members are appointed by the Governor for a four-year term and hold the qualifications of an appeals court judge. A decision in which two members concur constitutes a decision of the Board.

The Workers' Compensation Board was slated to be abolished in July 1, 2000, however, the Board was reinstated by HB 992 adopted in the 2000 regular session.

**Administrative Law Judges**

Administrative Law Judges (ALJs) serve as adjudicators in workers' compensation claims. They are supervised by a chief, the Honorable Sheila Lowther, who reports to the Commissioner. ALJs have offices in Covington, Fulton, Henderson, Danville, Louisville, Frankfort, Lexington, Mt. Sterling, Richmond, Pineville and Pikeville where conferences and hearings are held.

**Division of Security and Compliance**

The Division of Security and Compliance, headed by Director Gary Davis, C.P.A., is responsible for ensuring that non-exempt Kentucky employers maintain workers' compensation insurance coverage. The Self Insurance Branch audits group and individual self-insured employers and processes applications for self- insurance. The Coverage Branch maintains records documenting workers' compensation insurance coverage for Kentucky employers. The Enforcement Branch monitors Kentucky businesses to verify compliance with the Workers' Compensation Act.

**Division of Claims Processing**

Within the Division of Claims Processing, the Claims Branch, under Branch Manager Ora Burge, receives and processes applications for resolution of claims and assigns claims to administrative law judges.

The Appeals Branch, headed by Dianna Rose, is responsible for the processing of appeals to the Workers' Compensation Board. The Branch also prepares the record for appeals to the Kentucky Court of Appeals and the Kentucky Supreme Court.

An Open Records Section responds to voluminous requests for copies of DWC records.

**Division of Ombudsmen and Workers' Compensation Specialist Services**

The Division of Ombudsmen and Workers' Compensation Specialist Services maintains a toll free telephone line to assist citizens in workers' compensation matters by answering questions, providing information and attempting to resolve conflicts. Mediation services are available in an attempt to speed resolution of claims and expedite the delivery of benefits to injured workers. The Division is headed by the Honorable Cathy Costelle, Division Director, and the Honorable Andrew Manno, Chief Specialist.

## **DEPARTMENT OF WORKERS CLAIMS**

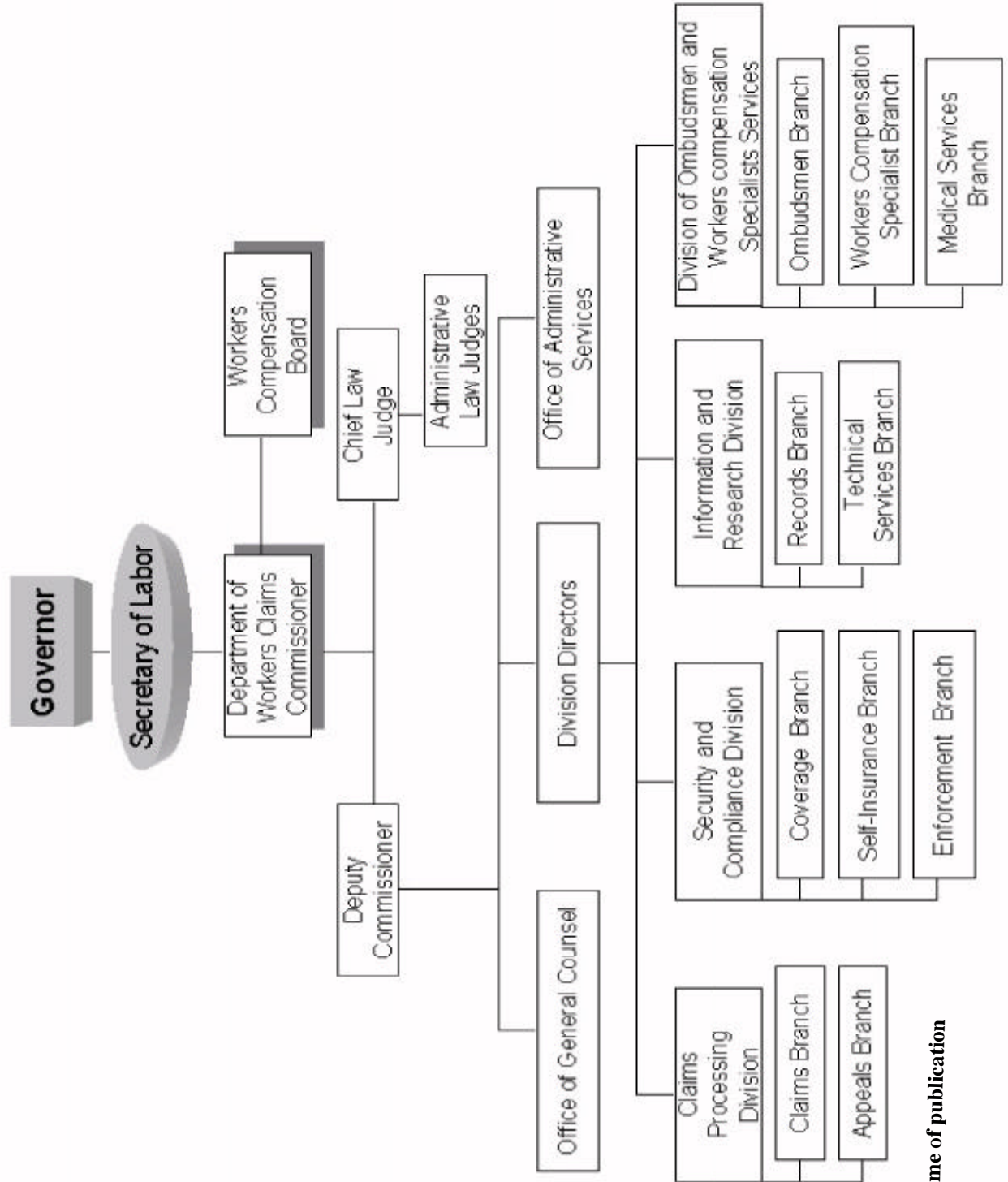
Workers' Compensation Specialists also assist injured workers in obtaining medical reports and other materials and prepare documents to support claim applications. Services are available in Frankfort, Louisville, Pikeville, Madisonville and Paducah to employees, medical providers, employers and insurance carriers.

### **Division of Information and Research**

Primary duties of this Division, led by Director Deborah S. Wingate, are collection, storage and retrieval of data and dissemination of information. The Records Branch is responsible for data entry, coding and ensuring the validity and integrity of the data. The Technical Services Branch renders both hardware and software services and is responsible for the development and maintenance of DWC's data systems, including the wide area network.

Through the Benchmarking Section of the Records Branch, the Information and Research Division performs critical research and publication functions. These include annual and quarterly reports, Workers' Compensation Guidebook, etc. Through Benchmarking's report card process, insurance carrier performance is monitored, including the timely filing of first reports of injury and fatalities. This section also responds to requests for program information from legislators, government agencies and the public.

# ORGANIZATIONAL STRUCTURE OF DEPARTMENT OF WORKERS CLAIMS



at the time of publication

## **DEPARTMENT OF WORKERS CLAIMS**



### **WORKERS' COMPENSATION HIGHLIGHTS - FY 2000**

- ◆ HB 992 was adopted by the Kentucky General Assembly on April 11, 2000, and signed into law by Governor Paul E. Patton on April 21, 2000; provisions to become effective July 14, 2000.
- ◆ Transition from the State's mainframe computer to Labor Cabinet's AS400 platform was completed.
- ◆ DWC's website received B rating from 2000 Workers' Disability Income Systems, Inc. Kentucky ranked in the top ten of all state workers' compensation program websites.
- ◆ DWC co-hosted the Kentucky Workers' Compensation 2000 conference in Covington in June of 2000; program attended by more than 200 people representing all sectors of the workers' compensation system.
- ◆ In March of 2000, use of Hewlett Packard Palmtop computers by field compliance officers was initiated.
- ◆ Medical bill reporting through Electronic Data Interchange (EDI) was mandated effective January 1, 2000.
- ◆ DWC issued carrier performance "report cards" for timely reporting of fatalities for calendar years 1998 and 1999.
- ◆ Effective July 1, 1999, Kentucky Employers Mutual Insurance company (KEMI) became the first insurance carrier to electronically report proof of coverage information directly to the department.
- ◆ In November 1999, DWC hosted educational conference for workers' compensation claims representatives, attended by nearly 200.

# PROGRAM STATISTICS



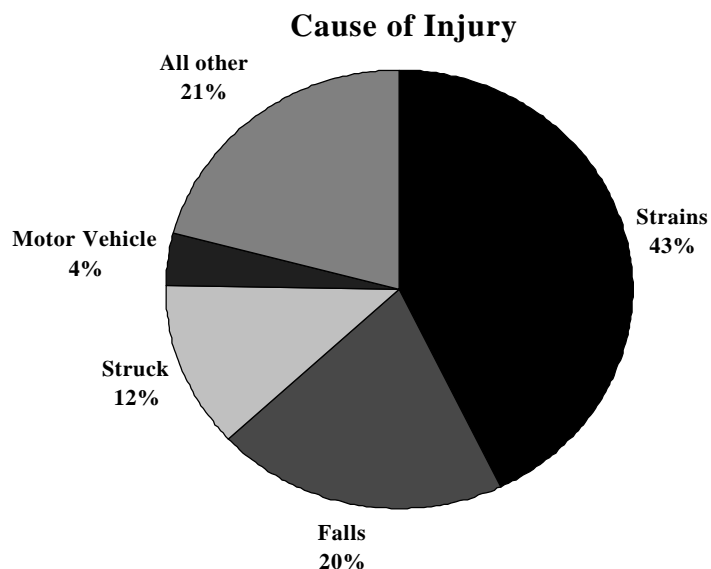
## DEPARTMENT OF WORKERS CLAIMS

### First Reports of Injury

Kentucky Revised Statute 342.038 mandates that employers keep a record of all workplace injuries received by employees. Employers must file a First Report of Injury with the Department of Workers Claims when more than one day of lost work occurs. This report must be filed within one week after learning of the injury. Kentucky employers who fail to comply with the requirement of KRS 342.038 are subject to the penalty provisions of KRS 342.990.

In Fiscal Year 2000, 44,092 lost time First Reports of Injury were filed with the Department, (meaning these injured workers missed more than one day of work). This represents a slight decrease from the prior fiscal year when 46,880 lost time injuries were reported.

The most common work-related injury in FY 2000 was caused by strain, mainly due to heavy lifting, with 18,806 workers injured. Falls followed as the second most common cause - 8,955 reported. Injuries caused by being struck by an object totaled 5,406. Motor vehicle accidents accounted for work injuries to 1,719 employees.

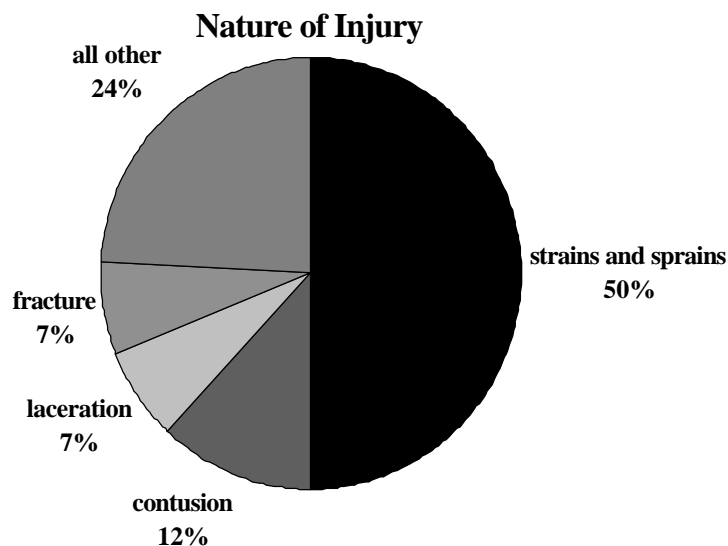


### First Reports of Injury by OCCUPATIONAL GROUPINGS

Handlers, helpers, laborers	8,649	20%	Drivers/Transportation	4,351	10%
Service occupations	7,353	17%	Sales	2,040	5%
Production, craft and repair	7,068	16%	Health occupations	1,257	3%
Machine operators & laborers	6,770	16%	<b>All other occupations</b>	<b>6,604</b>	<b>13%</b>

## ANNUAL REPORT FISCAL YEAR 1999-2000

Strain/sprain was the most common product of work-related injury, accounting for 22,045 of all reported injuries. Contusion was second as the leading result of injury in 5,262 incidences, followed by 3,127 lacerations and 2,981 fractures.



### First Reports of Injury by STANDARD INDUSTRIAL CLASSIFICATION

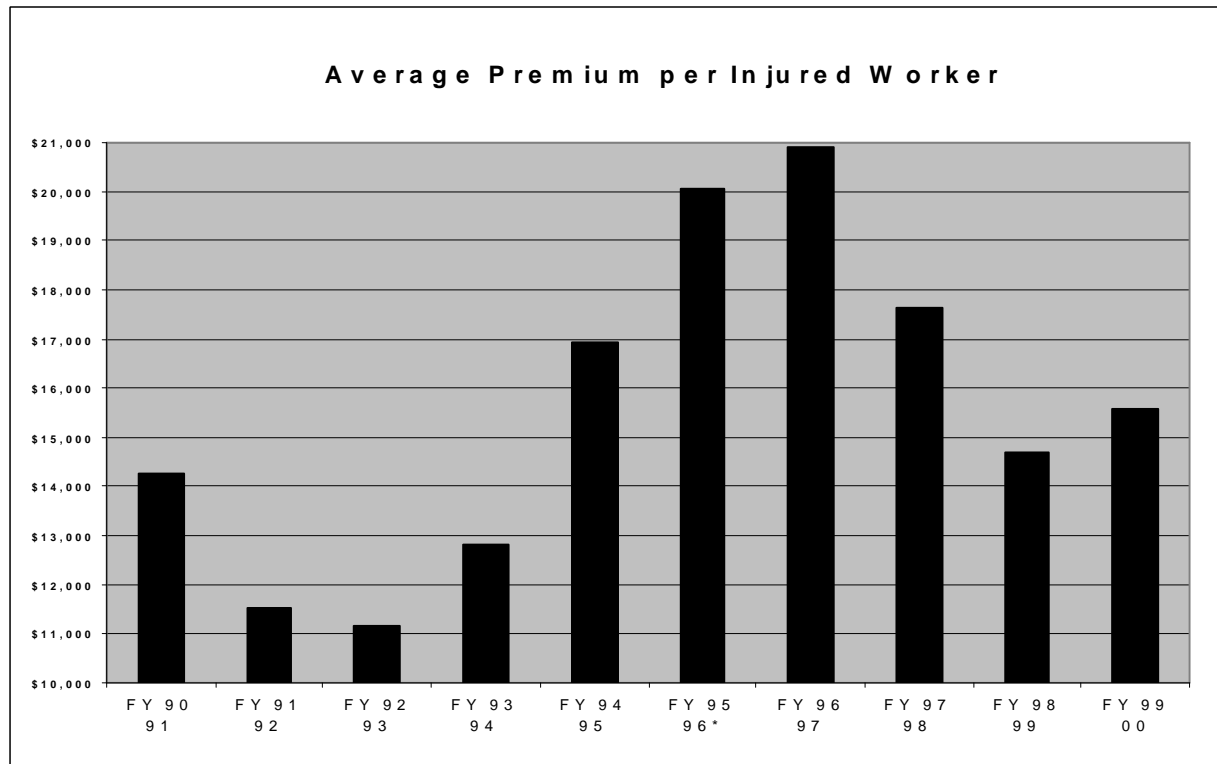
Agriculture*/forestry/fishing	600
Mining	1,956
Construction	3,946
Manufacturing	11,837
Transport/communication/utilities	3,995
Wholesale Trade	1,650
Retail trade	6,635
Finance/insurance/real estate	468
Services	10,759
Public Administration	1,795
Not classified	451
<b>Total</b>	<b>44,092</b>

\*Agriculture is not covered by Workers' Compensation Act; thus, few agricultural injuries are reported.

The body part most affected was the lower back, followed by upper extremities, knees and feet/ankles. See table below:

Body Part	First Reports	% of Total
lower back	9294	21%
upper extremities	7782	18%
multiple parts	4622	10%
knee	3426	8%
foot/ankle	3220	7%
shoulders	2442	6%
all other	13306	30%

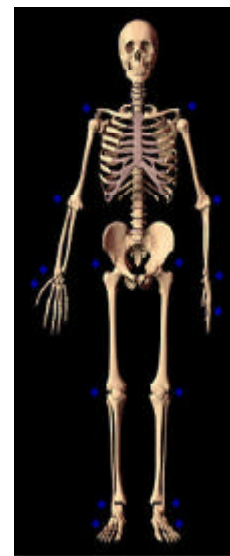
## DEPARTMENT OF WORKERS CLAIMS



\*Number of lost time injuries for FY 95-96 was adjusted due to the impact of the electronic reporting initiative (effective January 1996)

**The body parts most affected in the claims filed with the department in FY 2000 were:**

**Head - 210**  
**Neck - 133**  
**Upper Extremities - 922**  
**Trunk - 1680**  
**Lower Extremities - 581**  
**Multiple Parts - 727**  
**Unknown - 7**



## **Workers' Compensation Claims**

A workers' compensation claim in Kentucky originates when: 1) A settlement document is filed to voluntarily resolve workers' compensation issues between parties; or 2) a claim application is filed because the parties are not in agreement and the matter must be resolved by an Administrative Law Judge.

Workers' compensation claims are typically divided into two types, *indemnity and medical-only*, a distinction that is used in this report. Indemnity claims are those for which income benefits are paid to compensate for lost wages, functional impairment or death. Medical service costs are paid in addition to income payments. For an injury to be compensable, it must be caused by the employee's work. To be considered for temporary total income benefits, an injured worker must miss more than seven days of work. Medical-only claims are those where medical services are delivered but the employee does not qualify for income payments. Most of the data in this report pertains to indemnity claims. Presently, there is no statutory requirement that employers or their insurance carriers report medical-only injuries to DWC.

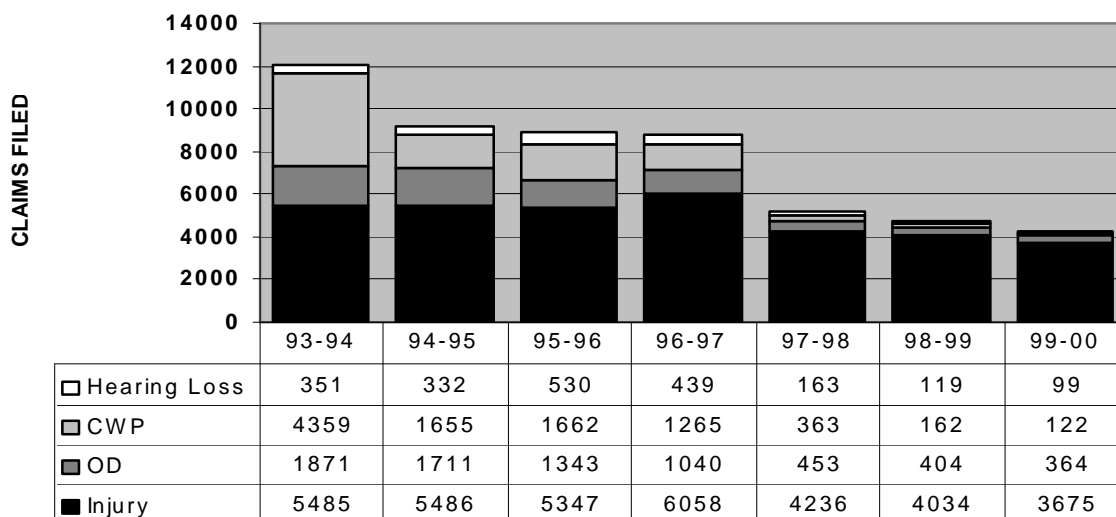
In FY 2000 there were 4,260 requests for resolution of claims filed with the Department of Workers Claims. This represents a steady decline in the number of litigated claims filed since FY97. In FY99 there were 4,719 claims filed with the department and in FY98 there were 5,215.

Claims are divided into types: Injury, Coal Workers' Pneumoconiosis (CWP), Occupational Disease other than CWP and Hearing Loss types. (See chart below)

In reviewing the causes of litigated injury claims, DWC found that strain was the most common cause, a total of 2,049. Fall (total 838) was the second most common cause. Injuries caused by being struck by an object totaled 409 and 280 claims involved motor vehicle accidents.

Machine operators filed the largest number of claims, 502, followed by laborers, 467, and truck drivers, 222. These occupations represent slightly over 25% of the total litigated claims filed in FY 2000.

### **CLAIMS FILED BY FISCAL YEAR**



## **DEPARTMENT OF WORKERS CLAIMS**

### **A Comparison by County**

#### **Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims**

<b><u>County</u></b>	<b><u>Labor Force</u></b>	<b><u>FROIs</u></b>	<b><u>% of FROIs to Labor Force</u></b>	<b><u>Claims</u></b>	<b><u>% of Claims to FROIs</u></b>
Adair	7581	116	1.53%	7	6.03%
Allen	8704	127	1.46%	14	11.02%
Anderson	10123	181	1.79%	17	9.39%
Ballard	4248	97	2.28%	6	6.19%
Barren	18964	403	2.13%	24	5.96%
Bath	5888	146	2.48%	19	13.01%
Bell	10082	323	3.20%	64	19.81%
Boone	44743	660	1.48%	23	3.48%
Bourbon	10259	248	2.42%	17	6.85%
Boyd	22910	531	2.32%	54	10.17%
Boyle	14714	305	2.07%	28	9.18%
Bracken	4056	89	2.19%	4	4.49%
Breathitt	4273	118	2.76%	16	13.56%
Breckenridge	7806	159	2.04%	21	13.21%
Bullitt	33772	689	2.04%	42	6.10%
Butler	5932	121	2.04%	7	5.79%
Caldwell	6584	160	2.43%	6	3.75%
Calloway	17963	311	1.73%	26	8.36%
Campbell	46344	540	1.17%	42	7.78%
Carlisle	2764	42	1.52%	1	2.38%
Carroll	5146	158	3.07%	10	6.33%
Carter	12031	257	2.14%	26	10.12%
Casey	6825	145	2.12%	13	8.97%
Christian	28194	468	1.66%	35	7.48%
Clark	16772	425	2.53%	43	10.12%
Clay	7456	230	3.08%	54	23.48%
Clinton	5640	109	1.93%	6	5.50%
Crittenden	4023	106	2.63%	8	7.55%
Cumberland	2909	76	2.61%	5	6.58%
Daviess	50659	1110	2.19%	73	6.58%
Edmonson	5010	106	2.12%	7	6.60%
Elliott	2833	26	0.92%	5	19.23%
Estill	5821	159	2.73%	24	15.09%
Fayette	146093	2364	1.62%	199	8.42%
Fleming	6165	140	2.27%	6	4.29%
Floyd	14134	527	3.73%	150	28.46%
Franklin	25321	484	1.91%	36	7.44%
Fulton	3444	39	1.13%	4	10.26%
Gallatin	3649	85	2.33%	2	2.35%
Garrard	7450	209	2.81%	22	10.53%
Grant	10117	328	3.24%	13	3.96%
Graves	17448	268	1.54%	39	14.55%

**A Comparison by County continued****Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims**

<b><u>County</u></b>	<b><u>Labor Force</u></b>	<b><u>FROIs</u></b>	<b><u>% of FROIs to Labor Force</u></b>	<b><u>Claims</u></b>	<b><u>% Claims to FROIs</u></b>
Grayson	12467	272	2.18%	20	7.35%
Green	4316	108	2.50%	12	11.11%
Greenup	16732	317	1.89%	29	9.15%
Hancock	4243	101	2.38%	4	3.96%
Hardin	36971	950	2.57%	57	6.00%
Harlan	9195	406	4.42%	134	33.00%
Harrison	7568	253	3.34%	11	4.35%
Hart	8054	189	2.35%	15	7.94%
Henderson	24284	469	1.93%	27	5.76%
Henry	7597	220	2.90%	11	5.00%
Hickman	2558	42	1.64%	3	7.14%
Hopkins	19834	592	2.98%	62	10.47%
Jackson	6872	124	1.80%	16	12.90%
Jefferson	382623	7877	2.06%	675	8.57%
Jessamine	21051	421	2.00%	36	8.55%
Johnson	9428	249	2.64%	58	23.29%
Kenton	80619	1041	1.29%	84	8.07%
Knott	5954	147	2.47%	43	29.25%
Knox	11379	207	1.82%	35	16.91%
Larue	6280	121	1.93%	6	4.96%
Laurel	23021	480	2.09%	59	12.29%
Lawrence	5620	106	1.89%	30	28.30%
Lee	2515	94	3.74%	10	10.64%
Leslie	4480	181	4.04%	82	45.30%
Letcher	8024	350	4.36%	55	15.71%
Lewis	4794	124	2.59%	6	4.84%
Lincoln	11182	314	2.81%	23	7.32%
Livingston	4927	99	2.01%	12	12.12%
Logan	13263	210	1.58%	19	9.05%
Lyon	3366	69	2.05%	6	8.70%
McCracken	33835	479	1.42%	74	15.45%
McCreary	6421	144	2.24%	14	9.72%
McLean	4771	108	2.26%	6	5.56%
Madison	36639	645	1.76%	43	6.67%
Magoffin	5239	115	2.20%	29	25.22%
Marion	10932	184	1.68%	13	7.07%
Marshall	14794	290	1.96%	24	8.28%
Martin	3107	183	5.89%	69	37.70%
Mason	8901	151	1.70%	10	6.62%
Meade	10818	169	1.56%	18	10.65%

## DEPARTMENT OF WORKERS CLAIMS

### **A Comparison by County continued**

#### **Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims**

<u>County</u>	<u>Labor Force</u>	<u>FROIs</u>	<u>% of FROIs to Labor Force</u>	<u>Claims</u>	<u>% Claims to FROIs</u>
Menifee	2921	78	2.67%	2	2.56%
Mercer	10963	274	2.50%	38	13.87%
Metcalfe	5054	112	2.22%	7	6.25%
Monroe	5596	93	1.66%	4	4.30%
Montgomery	12652	304	2.40%	37	12.17%
Morgan	5083	82	1.61%	12	14.63%
Muhlenberg	12614	265	2.10%	32	12.08%
Nelson	18928	458	2.42%	48	10.48%
Nicholas	3190	116	3.64%	8	6.90%
Ohio	10188	231	2.27%	26	11.26%
Oldham	24837	363	1.46%	22	6.06%
Owen	4348	75	1.72%	6	8.00%
Owsley	1741	39	2.24%	5	12.82%
Pendleton	6665	182	2.73%	8	4.40%
Perry	11886	384	3.23%	76	19.79%
Pike	27634	1011	3.66%	316	31.26%
Powell	6533	175	2.68%	20	11.43%
Pulaski	25976	700	2.69%	56	8.00%
Robertson	1058	29	2.74%	0	0.00%
Rockcastle	6282	141	2.24%	15	10.64%
Rowan	9476	180	1.90%	14	7.78%
Russell	5930	154	2.60%	13	8.44%
Scott	17654	568	3.22%	42	7.39%
Shelby	18029	265	1.47%	13	4.91%
Simpson	8365	117	1.40%	18	15.38%
Spencer	5145	149	2.90%	11	7.38%
Taylor	9789	210	2.15%	20	9.52%
Todd	5378	101	1.88%	7	6.93%
Trigg	5959	107	1.80%	4	3.74%
Trimble	3173	87	2.74%	6	6.90%
Union	6146	183	2.98%	27	14.75%
Warren	50095	958	1.91%	51	5.32%
Washington	5784	111	1.92%	8	7.21%
Wayne	8030	187	2.33%	5	2.67%
Webster	5538	194	3.50%	34	17.53%
Whitley	14557	454	3.12%	42	9.25%
Wolfe	3236	101	3.12%	11	10.89%
Woodford	13834	220	1.59%	20	9.09%
Out-of-state	NA	2638	NA	18	1.00%

\*\*\*NOTE: Some FROIs/Claims are not included here since county is not known.

**FY 2000 Work-Related Fatalities**



During FY 2000, 62 work-related fatalities were confirmed by the Department. This number represents a decrease from the 78 work-related fatalities reported in FY99. Twenty-nine additional deaths were reported to the Department; however, investigation revealed that these deaths were either not work-related or occurred to individuals not covered by the Workers' Compensation Act. It is important to note that agricultural workers are generally excluded from workers' compensation coverage in Kentucky; thus, farm fatalities are not reported to the DWC. Nationally, the number of fatal work injuries occurring in 1999 was nearly the same as the previous year, despite an increase in employment.

The youngest Kentucky worker killed on the job in FY 2000 was 17 years old; the oldest was 72. The average age at the time of death was 39, with the majority of fatality victims being in their 40's. Of the 62 work-related fatalities, 55 workers were male and 7 were female.

Nationally, construction accounted for one-fifth of all workplace fatalities, the largest number for any industry. Likewise, in Kentucky construction claimed the most lives - 13 work-related fatalities, almost half involving electrical work. Manufacturing claimed 13 lives, and 11 fatalities were reported in transportation/communication/public utilities. The mining industry accounted for seven deaths, eight fewer than in FY99. Six mining deaths occurred underground. The retail trade and service industries reported nine fatalities. The remaining five fatalities were from the public administration, forestry, and finance/insurance and real estate sectors.

Nationwide, motor vehicle accidents continue as the leading cause of on-the-job deaths, accounting for one-fourth of on-the-job fatalities. Forty percent of the 1491 victims of job related highway deaths were truck drivers. The second leading cause of fatal work injuries on the national scene, with a slight increase over the previous year, was fall. Approximately half of the fatal falls were from a roof, ladder or scaffold.

## **DEPARTMENT OF WORKERS CLAIMS**

Nationwide, workers struck by objects or equipment accounted for 10 percent of the fatal injuries in 1999 and electrocutions accounted for 5 percent. For comparison, the “Causes” of Kentucky’s work related fatalities appear in the following chart:

### **Causes of Work-Related Fatalities in Kentucky in FY 2000**

Motor Vehicle - 27	Absorption/ingestion - 2
Struck by an object - 9	Crime victim - 1
Fall/slip - 6	Explosion - 1
Crushed - 5	Other, not classified - 6
Electrocution - 5	

All but six of these 62 employees died on the day of their injury. Seven days is the longest an injured worker survived before succumbing. This was a 22-year old construction worker.

### **Kentucky counties reporting work-related fatalities in FY 2000:**

Anderson - 1	Lawrence - 1
Boone - 1	Letcher - 1
Bourbon - 1	Logan - 1
Boyd - 1	McCracken - 2
Bracken - 1	McCreary - 1
Clark - 3	Madison - 2
Cumberland - 1	Marshall - 1
Fayette - 3	Martin - 1
Floyd - 1	Mercer - 1
Franklin - 1	Montgomery - 1
Greenup - 1	Muhlenberg - 1
Hardin - 1	Nelson - 1
Harlan - 2	Perry - 1
Harrison - 1	Pike - 7
Hart - 1	Pulaski - 1
Henderson - 3	Rockcastle - 1
Hopkins - 1	Washington - 1
Jefferson - 5	Whitley - 2
Jessamine - 1	Webster - 1
	Out of State - 4

# DWC PROGRAMS/ PERFORMANCE



## DEPARTMENT OF WORKERS CLAIMS

### WORKERS' COMPENSATION BOARD



Dwight T. Lovan, Board Chair

Board member Dwight T. Lovan received his Bachelor's degree from Baylor University and J.D. from the University of Kentucky College of Law. Admitted to the Kentucky Bar in 1977, Judge Lovan worked as a staff attorney for the Kentucky Court of Appeals with responsibility for workers' compensation appeals for 15 months. From 1979 to 1990 he practiced law in Owensboro, concentrating in the areas of workers' compensation and civil litigation.

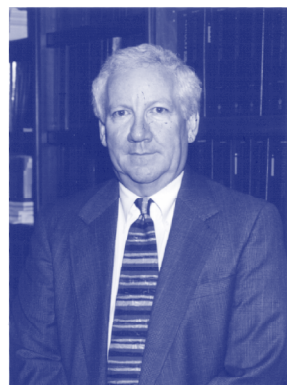
In May of 1990, Judge Lovan was appointed Administrative Law Judge and remained in that position until August of 1994 when he was named to the Kentucky Workers' Compensation Board. In July 2000, he was appointed Chairman.



Jonathan Stanley

Board member Jonathan Stanley received his Bachelor of Arts degree from Morehead State University in 1978 and a Masters Degree in international economics and political science from the University of Kentucky in 1979. He received his J.D. from the University of Kentucky College of Law in 1982.

While in law school, Judge Stanley worked as a law clerk for the Special Fund. From 1983 - 1997, he was a partner in the firm of Wilson and Stanley in Lexington. Judge Stanley was appointed to the Kentucky Workers' Compensation Board in 1999.



John Anthony Gardner

Board Member John A. Gardner graduated from Western Kentucky University in 1971 and received his J.D. from the University of Kentucky in 1974.

Judge Gardner served on the district court bench for the 24<sup>th</sup> Judicial District from 1979-1991 and again from January 2000 to June 2000. He was elected to the Kentucky Court of Appeals in 1991 and served an eight-year term. In July of 2000, Judge Gardner was appointed to the Workers' Compensation Board.

**ADMINISTRATIVE LAW JUDGES**



**Sheila C. Lowther**  
**Administrative Law Judge**

Sheila C. Lowther graduated cum laude from Transylvania University in 1977. She received an English Speaking Union Fellowship and attended the University of London. She received her J.D. from the University of Kentucky in 1980.

Judge Lowther was in private practice, focusing on workers' compensation in Madisonville, Kentucky from 1980 through 1995. She was appointed an Administrative Law Judge for the Kentucky Department of Workers Claims in 1995 and since January 1999, has served as Chief ALJ.

**ALJ ACTIVITY**

During FY 2000, the thirteen administrative law judges (ALJs) held 2,175 informal conferences and 1,647 formal hearings in claims transferred or appealed from the arbitration level. The ALJs issued 1,455 opinions in these claims.

In addition, ALJs were designated to serve as acting arbitrators. In that capacity, they held 1,675 benefit review conferences and issued 945 benefit review determinations.

**OFFICE OF GENERAL COUNSEL**

The Office of General Counsel provided a wide range of legal services to the DWC, taking on 205 new cases in FY 2000, and collecting approximately \$371,000 in penalties assessed by the Commissioner.

**OFFICE OF  
ADMINISTRATIVE SERVICES**

The Office of Administrative Services (OAS), under the supervision of the deputy commissioner provides logistical support for the department. Functions of this office include purchasing supplies, furnishings and equipment, processing personal services contracts, inventory control, audit of invoices; assistance with budget preparation; distribution of printed materials; and mail services. Six (6) full time personnel staff the Office of Administrative Services. Current projects include the development and implementation of a computerized inventory control system. This system will track an estimated \$2,000,000 worth of personal property as well as maintenance contracts for computer equipment. Implementation will take place in February 2001. OAS is also responsible for the fiscal management of 14 field offices and hearing sites.

**DEPARTMENT OF WORKERS CLAIMS**

# DIVISION of SECURITY and COMPLIANCE



## **DEPARTMENT OF WORKERS CLAIMS**

### **Division of Security and Compliance**

Through the efforts of the Coverage, Self-Insurance and Enforcement Branches, the Division of Security and Compliance focuses its resources on ensuring that non-exempt Kentucky employers maintain workers' compensation insurance coverage.

#### ***Self-Insurance***

Branch auditors utilize independent resources, including regional and national newspapers, business periodicals, Internet business sites and Dun & Bradstreet services to monitor the financial condition of self-insurers. During FY 2000 the Department finalized the examination of Workers Guardian Self-Insurance Fund and performed examinations on Forest Industry Self-Insurance Fund, Associated General Contractors Self-Insurance Fund and Cooperative Self-Insurance Fund.

Conversion of self-insured group funds to a fully insured product via a "loss portfolio transfer" tailed off during FY 2000. Self-insured group funds moved to solidify their premium base and recapture market share lost during the past few years of Kentucky's highly competitive workers' compensation market. There were no insolvencies of group self-insurers to impact the Kentucky Group Self-Insured Guaranty Fund.

While the vast majority of Kentucky self-insured employers are financially strong, self-insured employers experiencing financial stress are placed on a "Watch-List" and monitored on a quarterly basis. "Watch-List" membership decreased from 13 corporations in FY98 to only five in FY 2000. There has been a gradual decline in the number of individual self-insured employers during the year. Since fiscal year 1998, self-insurance has experienced a net reduction of 23 employers bringing the FY 2000 total to 201 as noted below:

	<b><u>FY 1998</u></b>	<b><u>FY 1999</u></b>	<b><u>FY 2000</u></b>
<b>Companies on Watch-list</b>	13	9	5
<b>Individual Self-Insurers</b>	224	214	201
<b>Self-Insured Groups</b>	10	10	10

HB1 (Extraordinary Session, Dec. 1999) established three guarantee associations, the Kentucky Individual Self-Insured Guaranty Fund (hereinafter Individual G. F.), the Kentucky Group

## **ANNUAL REPORT FISCAL YEAR 1999-2000**

Self-Insured Guaranty Fund (hereinafter the Group Fund) and the Kentucky Coal Employers Self-Insurance Guaranty Fund (hereinafter the Coal G.F.), for the purpose of protecting workers and their dependents in the event of insolvency of a self-insured. Prior to FY 2000 there had been no insolvencies of self-insureds that impacted any of the guaranty funds.

In December of 1999, Fruit of the Loom Inc. (FOL) filed Chapter 11 bankruptcy proceedings. Several months later DWC was notified that FOL would no longer pay its workers' compensation obligations. The Commissioner called the letter of credit that DWC held to secure FOL's obligations and notified the Individual G.F. that it was responsible for the continuation of payments. Proceeds from the letter of credit were transferred (over \$11 million) to the Individual G.F., claims administration contracts were established and investment and accounting procedures were created to administer the funds. Fortunately, the security appears to be sufficient to pay all current and future FOL claims. No injured workers have missed benefit payments because of the bankruptcy of FOL and the transition to Individual G.F. payments was seamless.

On June 16, 2000, Quaker Coal Company filed for relief under Chapter 11 of the United States Bankruptcy Code and on July 21st, shortly after the close of FY 2000, Quaker defaulted in payments due under the Kentucky Workers' Compensation Act. Since the close of FY 2000, DWC drew upon the Quaker security bond and funds were transferred to the Coal Employers' Guaranty Fund for the purpose of continuing payments. As of this writing, Coal G.F. has received sufficient bond proceeds to continue payments, once again permitting a relatively seamless transition for injured workers.

During FY 2000 the DWC was confronted with the potential bankruptcy of several large insurance carriers who were providing security bonds and excess insurance to numerous self-insured employers.

Frontier Insurance Company proved to be the most significant of these carriers, providing more than \$80 million of surety bonds, as well as excess insurance to several large coal companies in Kentucky. Frontier Insurance Company, rated by A.M. Best as an A- company (excellent) in October 1999, suffered a rapid fall to C++ (marginal) by April 2000. In late March, DWC notified self-insured employers utilizing Frontier as either a provider of surety or excess insurance that adequate replacement surety must be substituted. At the close of FY 2000, more than half of the outstanding surety and all of the excess insurance had been replaced.

In addition to concerns surrounding Frontier Insurance, the Department has successfully obtained surety and excess insurance replacements for self-insured employers using Reliance and Amwest Insurance companies.

## **DEPARTMENT OF WORKERS CLAIMS**

### ***Coverage***

Beginning January 1, 1998, insurance carriers were required to submit workers' compensation proof of coverage (POC) transactions electronically through the National Council on Compensation Insurance (NCCI), as Kentucky's exclusive data collection agent, in accordance with IAIABC (International Association of Industrial Accident Boards and Commissions) standards. On June 1, 1999 DWC's Commissioner notified all carriers that due to data quality issues, the Department of Workers Claims was terminating NCCI's role as the proof of coverage data collection agent effective October 1, 1999. This action created the opportunity for other companies to serve as data collection agents, fostering a competitive environment with improved data quality. Currently, two data collection agents are approved by the Department of Workers Claims, Claimport (formerly Unicom) and Workers' COMPLINK. Coupled with the Department's purchase of a license to use an Internet-based option developed by Workers' COMPLINK, the system allows carriers to bypass vendors and report proof of coverage information directly to Kentucky. DWC now operates the nation's premier EDI-POC system. In almost all instances, the transfer of information and acknowledgment of proof of coverage is accomplished within three (3) working days.

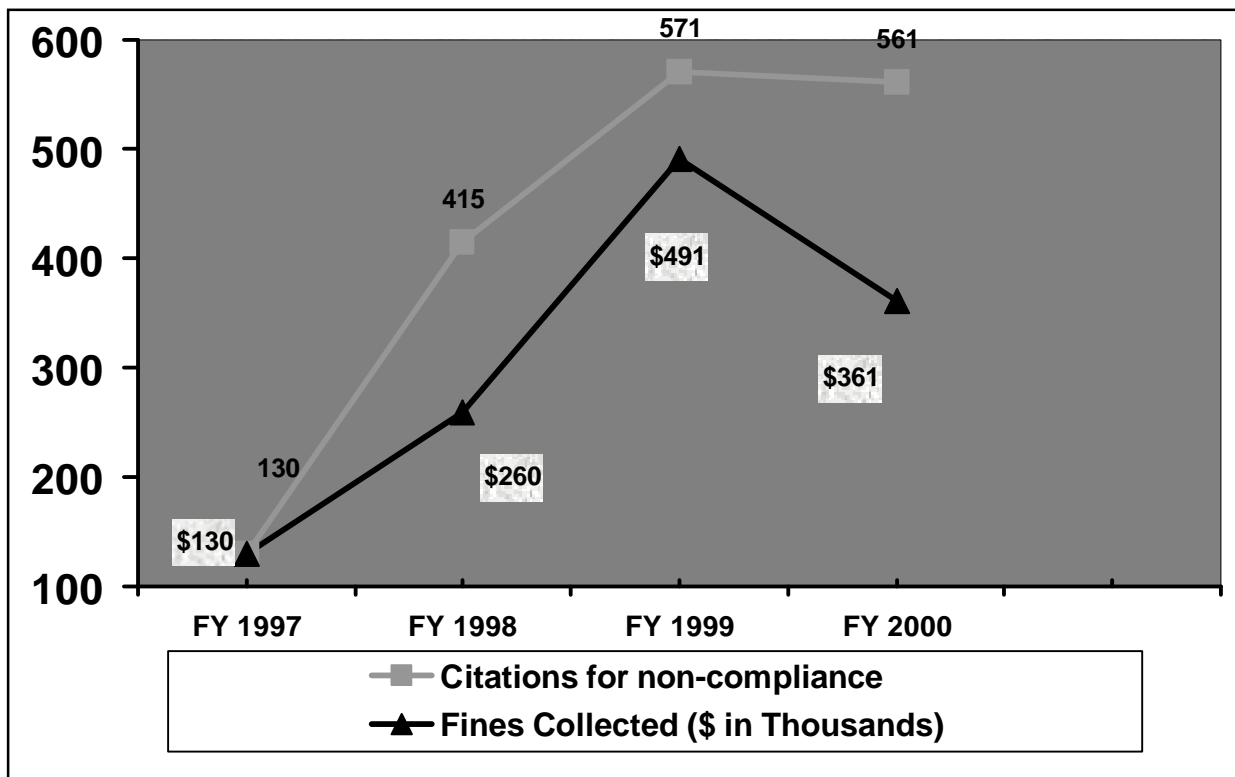
### ***Enforcement***

During FY 2000, the DWC compliance officers inspected 10,208 Kentucky businesses to verify compensation coverage. The Commissioner issued 561 citations, assessed penalties of \$639,350 and fines in the amount of \$316,333 were collected.

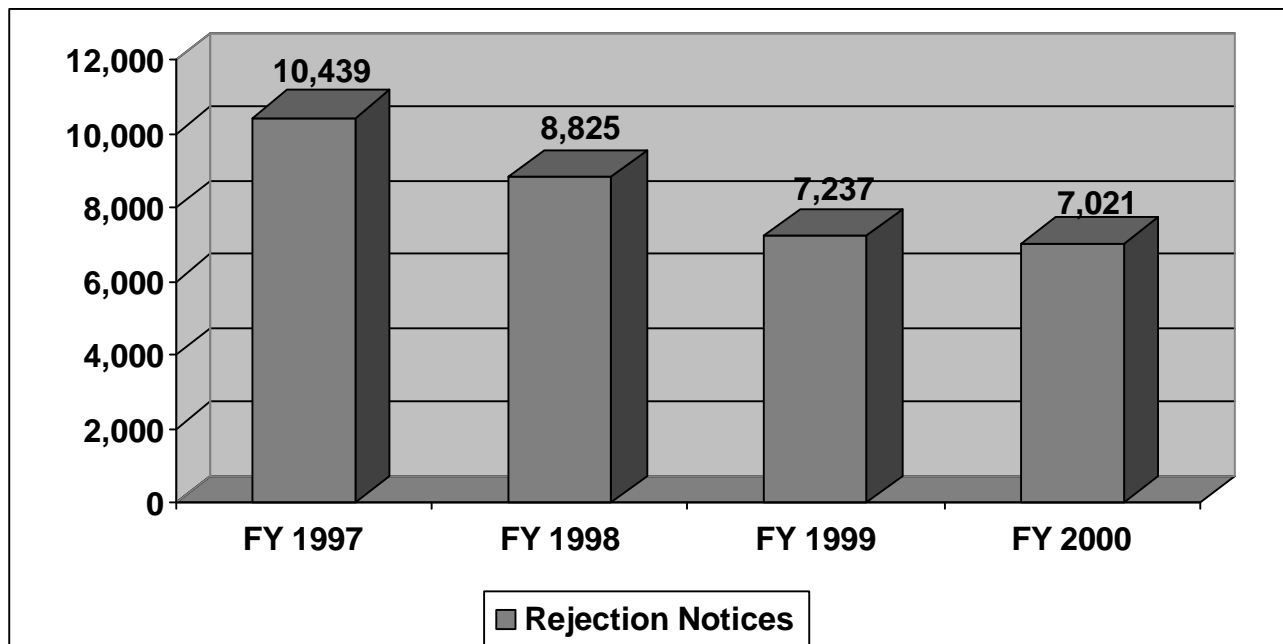
Subsequent to the passage of HB 1 in December of 1996, concern arose that vast numbers of employees would opt out of workers' compensation and reject coverage. Review of the facts reveals the opposite has occurred. The number of employees filing notice with the Department to reject coverage under the Kentucky Workers' Compensation Act has reached its lowest point since 1987 and has continued to decline, with 7,021 on file for the fiscal year.

Early in 1998 the Enforcement Branch began looking for ways to improve the efficiency of officers and the quality of data obtained during field investigations. Historically, officers completed paper forms by hand and submitted information via mail or fax. Upon receipt of this information, additional staff were used to enter the data before any analysis could be performed. Recognizing that efficiency could be gained if each officer's investigative data was electronically transmitted, DWC researched alternatives. With the purchase and implementation of HP Palmtop Computers in FY 2000, the compliance officers broke new ground. Now all data elements are entered via touch sensitive screens using pull-down menus and click-on boxes.

Uninsured Employer Activity



Form 4 - Rejection Notices



**DEPARTMENT OF WORKERS CLAIMS**

# DIVISION of CLAIMS PROCESSING



## **DEPARTMENT OF WORKERS CLAIMS**

### **CLAIMS BRANCH**

The Claims Branch is comprised of the Claims Assignment, Docket, Case Files, and Open Records sections. The branch is charged with the responsibilities of receiving and processing all Applications for Resolution of Claims and assignment of those claims to the Administrative Law Judges. The branch prepares the Frankfort Motion Docket and processes orders, routes claim files and documents and disseminates claim information.

### **OPEN RECORDS**

The Open Records Branch responds to written requests for workers' compensation information under the Kentucky Open Records Act, KRS 61.870-884. Many of these requests are from employers inquiring about an employee's history of work related claims; more than 14,000 such requests were received in FY 2000. Pursuant to KRS 342.229 the DWC treats injury reports as exempt from disclosure. Hundreds of additional inquiries are received from the Social Security Administration (231) and Kentucky's Department of Fish and Wildlife (272). Additionally, during FY 2000, just under 100 inquiries for information were presented in person.

Charges for photocopied and microfilmed pages are modest, yet, during FY 2000, \$48,509 was collected in copying charges.



### **APPEALS BRANCH**

The Appeals Branch is responsible for processing records on claims appealed from ALJ decisions to the Workers' Compensation Board (WCB), the Kentucky Court of Appeals and the Supreme Court. Personnel assigned to the Appeals Branch work closely with the Workers' Compensation Board members and its staff to ensure appeals are processed in a timely manner. All motions on appeals are tracked and presented to the WCB weekly for appropriate action; a database is maintained of all appellate filings; and inquiries regarding the status of active appeals are directed to the Appeals Branch. During FY 2000, 572 ALJ decisions were appealed to the Workers' Compensation Board; 274 WCB decisions were appealed to the Court of Appeals; and 96 workers' compensation claims were appealed to the Supreme Court.

# DIVISION of OMBUDSMEN & WORKERS' COMPENSATION SPECIALIST SERVICES



Photo Source: Hazard Kentucky and Perry County Photo History

## **DEPARTMENT OF WORKERS CLAIMS**

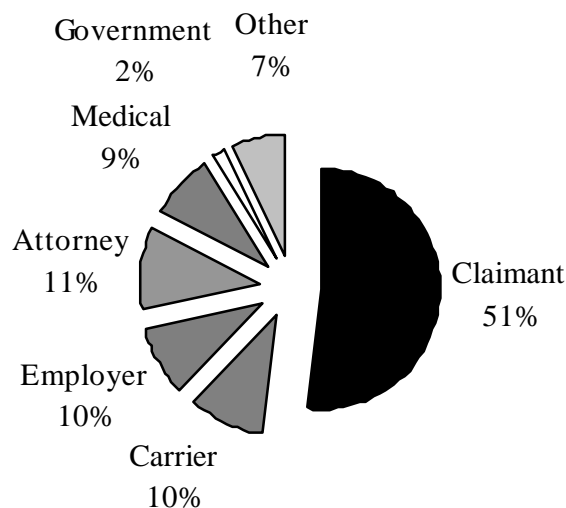
During FY 2000 the Division of Ombudsmen and Workers' Compensation Specialist Services continued proactive efforts to provide assistance and information, responding to over 15,000 requests. Most of these were completed within one week of the initial contact. In addition to providing information, ombudsmen and specialists routinely intervened in disputes among participants within the workers' compensation system. In these interventions, the ombudsmen or specialist expedite a resolution by facilitating communication. In FY 2000, ombudsmen and specialists intervened in over 2,000 disputes, successfully resolving two-thirds of them.

In FY 2000, a computerized system was implemented, tracking ombudsmen and specialists' activity. This system allows for the retrieval of requests for assistance previously made to any of the division staff, helping to avoid duplication of services and allowing faster service to constituents.

### **OMBUDSMEN ACTIVITY**

Number of Requests for Assistance	7904
Number of Completed Requests	7178

Subject of calls:	
Medical fee schedule	391
Rights and procedures	5096
Medical fee disputes	88
Informal mediation	356
Intervention	211
Claims status	782
Fraud	41
Coverage	1000
First Reports of Injury	283
Managed Care	101
Vocational Rehabilitation	11
Utilization Review	98
Other	920



**Source of Calls to Ombudsmen**

### **WORKERS' COMPENSATION SPECIALIST ACTIVITY**

#### **UNFAIR CLAIMS PRACTICES**

In FY 2000, there were 107 new unfair practice claims investigations opened by DWC. One hundred fourteen investigations into unfair claims practices were completed by the close of the fiscal year.

Requests for assistance received	7683
Number of requests completed	6635
Number of intervention requests received	597
Number of intervention requests completed	662
Assisted in claims filed	131
Other forms of assistance	153

## **MANAGED CARE**

Of all of the medical cost containment measures enacted in the 1994 (HB 928) reform of the Workers' Compensation Act, managed care continues to play the most significant role. Workers' compensation managed care plans are very much like general health care HMOs except they are created specifically to treat employees with work-related injuries or illnesses. Managed care emphasizes controlling utilization through gate-keeper physicians, pre-certification of services, strong case management and coordination of medical treatment and return to work policies. Through managed care plans approved by the Commissioner of the Department of Workers Claims, employees still have physician choice, but within the confines of the plan's provider network.

Based on reports by the managed care plans approved to operate in the Commonwealth, approximately 34% of Kentucky's workforce is covered by a managed care plan.

DWC has recently completed the process of providing managed care reporting requirements, forms, instructions and Frequently Asked Questions (FAQs) on the agency's website. A listing of all managed care plans approved to operate in the Commonwealth is also available at **[dwc.state.ky.us](http://dwc.state.ky.us)**

## **UNIVERSITY MEDICAL SCHOOL EVALUATIONS**

As mandated by KRS 342.315, DWC has contracted with the University of Kentucky and the University of Louisville medical schools to perform evaluations of employees maintaining workers' compensation claims. Referral is mandatory for occupational disease and hearing loss claims and is optional in traumatic injury claims.

Examinations scheduled from July 1, 1999 - June 30, 2000:

	<u>University of Kentucky</u>	<u>University of Louisville</u>	<u>TOTAL</u>
<b>INJURY CLAIMS</b>	<b>164</b>	<b>174</b>	<b>338</b>
<b>HEARING LOSS</b>	<b>42</b>	<b>50</b>	<b>92</b>
<b>PULMONARY</b>	<b>32</b>	<b>34</b>	<b>66</b>
<b>TOTAL</b>	<b>238</b>	<b>258</b>	<b>496</b>

## **DEPARTMENT OF WORKERS CLAIMS**

### **Vocational Rehabilitation Training**

KRS 342.710 states that an employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for the period necessary to accomplish physical rehabilitation goals which are feasible, practical and justifiable. When, as a result of the injury, an employee is unable to perform work for which the employee is experienced, vocational retraining is to be offered.

Kentucky law allows for 52 weeks of vocational training to be paid for by the insurer. This period may be extended in unusual cases. Additional benefits include reasonable cost of board, lodging and travel, also paid by the carrier.

DWC's Vocational Rehabilitation staff becomes involved at the conclusion of a claim, when an Administrative Law Judge sends a copy of the Rehab Order to the Rehab Section. Workers' compensation specialists contact the insurer to obtain authorization for the vocational evaluation. Once authorization is received, an evaluation is scheduled. The resultant report is reviewed by the rehab supervisor with the injured worker to develop a plan for retraining.

DWC works closely with other state agencies in the pursuit of retraining opportunities for the injured worker.

During FY 2000, there were 209 cases referred to the Rehab Section by the Department's ALJs and arbitrators and 44 cases referred by other sources, bringing the total to 253. This was a slight increase over FY99's total of 244. The following statistics are based only on cases referred by ALJs or arbitrators.

- 14% of these injured workers had awards for permanent total occupational disability
- the average age was 39
- two-thirds of the injured workers were male
- 65% of the injured workers came from occupations requiring substantial physical activities
- 22% of the individuals were from lighter occupations
- 14% of the injured workers were coal miners

The Rehab Section closed 222 cases during FY 2000. The following is a statistical description of those cases, representing 'Closed — Rehabilitated' and 'Closed — Not Rehabilitated'.

**Closed — Rehabilitated: 52**

**Returned to work/same employer - 4**

**Returned to work/new employer - 48**

In the 'Closed-Rehabilitated' category, the average award for permanent occupational disability was 43%. More than half (57%) suffered from back injuries. The average age of the injured worker was 38; 48% were male and 52% were female and the average completed years of education was 12.

**Closed — Not Rehabilitated: 170**

**Mutual agreement to close - 105**

**Lump sum settlement - 44**

**Rehab not ordered on appeal - 20**

**Rehab order rescinded - 1**

In the "Closed-Not-Rehabilitated" category, the average award for permanent occupational disability was 68%. More than half (63%) suffered from back injuries. The average age of the injured worker was 41; 72% were male and 28% were female; and the average completed years of education was 11.

## **Utilization Review**

Utilization review was enacted as part of legislation designed to control escalating medical costs. (HB 928; April, 1994). Mandatory review of medical treatment by medically trained personnel is intended to insure delivery of appropriate treatment. Statistics do not support anecdotal commentary to the effect that UR entities are simply an arm of the insurance carrier - utilized to deny service.

Departmental efforts to analyze and improve the mandatory utilization review process (KRS 342.035; 803 KAR 25:190) included compilation of audit data from each approved utilization review entity for the 1999 calendar year. Summary results indicate that UR entities processed 56,633 utilization reviews at the initial utilization review level (nurse review/approval or physician review resulting in approval or denial). Care was approved in 51,947 of those cases. The overall approval rate was 92%; meaning that 92% of proposed treatment was approved as reasonable and necessary by the UR review process. This statistic comes as a surprise to many. A criticism of the UR process has been that the process is biased in favor of denying treatment to meet expectations of short-term dollar savings for insurance carriers and self-insured employers.

**DEPARTMENT OF WORKERS CLAIMS**

# DIVISION of INFORMATION and RESEARCH



## **DEPARTMENT OF WORKERS CLAIMS**

### **Technical Support Branch**

Technical Support has worked diligently over the past year to achieve a more secure and reliable network that serves the Department of Workers Claims.

Technical Support has succeeded in upgrading the department's virus software to the most current level. Each pc and server within the local area network (LAN) has been upgraded and automated for daily scans and weekly data file updates to secure the integrity of the network.

To ensure the reliability of the department's data, DWC has contracted with the Governor's Office of Technology (GOT) to conduct nightly TSM backups on all production servers. This has proven to be a cost-effective process, reducing staff time and eliminating the need to purchase the required hardware for reliable, nightly backups. This process has also provided DWC with a reliable Disaster Recovery Plan. In addition to TSM backups, the department has contracted with GOT for the installation of an Ethernet Fiber backbone connection, replacing the Token Frame Relay in order to provide a faster and more reliable connection to the wide area network (WAN).

Technical Support has converted all department servers and workstations from Novell NetWare to Microsoft NT operating systems in order to comply with a GOT directive. Implementing a Data Server and an Application Server environment at this juncture also reduced the possibility of data corruption.

Technical Support converted an existing RFA (Requests for Assistance) system to an SQL platform, a system used by the ombudsmen and specialists in the retrieval and collection of information. This conversion resulted in faster on-line retrieval of information to better serve the public. Another department-wide project was the implementation of an electronic time sheet application.

DWC installed a Systems Management Server Utility that provides a hardware and software inventory for reporting and analysis. This system enables the technical staff to distribute software upgrades to all workstations and servers and to provide technical assistance to users in all DWC offices from a central location.

Committed to keeping DWC technologically connected, secured and updated, Technical Support's current projects include:

- ◆ networking the remaining DWC remote office locations, providing access to all of the department's applications and data
- ◆ replacing the existing process of providing CompLaw data to all ALJs with an automated system, allowing CompLaw data to be stored on a computer and downloaded as needed
- ◆ moving toward a Web-enabled environment which will provide access to all; injured workers, claims adjusters, carriers and employers will be able to file claims, submit reports, and check the status of a claim with the click of a mouse

## **Electronic Data Interchange**

Insurance carriers and self-insured employers are statutorily required to report workers' compensation activity to DWC through Electronic Data Interchange (EDI). Prior to FY 2000, this requirement included filing of First and Subsequent Reports of Injury and proof of workers' compensation coverage. Implementation of a new EDI system began on January 1, 2000 with a statutory mandate requiring EDI filing of all workers' compensation medical bills paid on or after that date. As of this publication, 53 companies have initiated medical bill EDI testing with DWC, with 30 in production status.

Currently, DWC exchanges EDI documents with more than 150 companies, including carriers, self-insured employers, third-party administrators and medical bill vendors. During FY 2000, DWC accepted more than 500,000 EDI reports.

## **Records Branch**

The Records Branch processes an average of 10,000 documents per month including claims applications, opinions, agreements, and various motions and orders. It also processes electronically and reviews by hand thousands of EDI reports including disability status reports, (IA2s) and First Reports of Injury (IA1s). The Records Branch also notifies workers of statutory limitations for filing a claim and maintains the physician's medical qualification index.

### *Scanning*

During FY 2000, DWC scanned into the system 208,578 documents containing nearly 2.5 million pages. Through the imaging system, multiple DWC users can retrieve documents simultaneously onscreen, decreasing paper consumption and hand routing within the department.

### *Benchmarking*

Pursuant to Section 80 of HB 1 (Special Session, December 1996), DWC assumed a proactive role in improving carrier and self-insured employer performance through an extensive benchmarking program. Benchmarking is designed to monitor and analyze insurance carrier performance. Detailed reports on timely filing of first reports of injury and fatalities are generated based on data elements transmitted electronically to DWC by carriers. In the near future, this data may be analyzed and weighted for carrier market share and by the number of employees covered to formulate a ranking system for carrier performance. Through publication of benchmark report cards, DWC provides feedback to carriers as to achievements and deficiencies. Patterns of regulatory violations are referred to the Commissioner for consideration. Benchmarking carrier performance is essential to ensure timely filing of injury reports and coverage and prompt and accurate payment of indemnity and medical benefits.

## **DEPARTMENT OF WORKERS CLAIMS**

### **REPORT CARDS**

Kentucky is believed to be the first state with an active benchmarking program for carrier performance. DWC benchmarking staff have identified 11 key indicators. These are:

- Timely Filing of Fatalities (KRS 342.038)
- Timely Filing of First Reports (KRS 342.038)
- Timely Payment of Income Benefits (KRS 342.040)
- Proper TTD Payment Amounts (KRS 342.730)
- Proper Filing of Subsequent Reports (KRS 342.038(5))
- Prompt Payment of Travel Expenses Related to Medical Evaluations (KRS 342.315)
- Prompt Payment of Medical Expenses (KRS 342.020)
- Timely Notice of Coverage (WCI1) (KRS 342.340)
- Prompt Notification of Cancellation of Coverage (WCI2) (KRS 342.340)
- Incidence of Unfair Claims Practice Allegations (KRS 342.267)
- Utilization Review & Medical Bills (KRS 342.035)

The DWC report card program is based on data received through electronic data interchange (EDI). Carriers have provided DWC with valuable feedback for enhancing the report card process and the program continues to advance. Through this process, both the Department and insurers have become more aware of the importance of valid data transmission. Carriers are encouraged to take steps necessary to ensure that data is not only submitted timely, but also accurately and completely. Once data quality and programming issues are resolved, benchmarking will prove to be a valuable tool for monitoring carrier performance as well as a medium for improving delivery of services to injured workers.

### **Fatality “Report Cards” issued:**

KRS 342.038 requires an employer’s insurance carrier or other party responsible for the payment of workers’ compensation benefits to make a report to the Department of Workers’ Claims within one week of receiving notification of a fatal injury. During December 1999, Benchmarkers issued the third Fatality “Report Card” to insurance carriers for fatalities reported during calendar year 1998. Of the 81 fatalities reported to the Department in 1998, less than one-third were filed “untimely”.

In January, DWC issued report cards concerning timely filing of fatalities reported in 1999 to approximately 46 carriers, third-party administrators (TPAs) and self-insured employers. Of the 59 work related fatalities, an estimated 27 fatalities were reported in an untimely manner. The most common explanation for delay was computer and clerical errors.

# WORKERS' COMPENSATION COURT DECISIONS



## **DEPARTMENT OF WORKERS CLAIMS**



### **RECENT KENTUCKY SUPREME COURT AND COURT OF APPEALS DECISIONS:**

In Magic Coal Co. v. Fox, 19 S.W.3d 88 (KY 2000), the Supreme Court held that the language of KRS 342.315, indicating that university evaluations are to be given presumptive weight, creates a rebuttable presumption. The party against whom this presumption operates has the burden of going forward with evidence sufficient to rebut the presumption. Consequently, findings of university evaluators are presumed to accurately reflect the medical condition of the claimant in the absence of evidence to rebut that presumption. Findings of university evaluators constitute substantial evidence with regard to medical questions which, if uncontradicted, may not be disregarded by the fact finder. A reasonable basis must exist for disregarding the testimony of the university evaluators. If the University evaluation is uncontradicted by other medical evidence it must stand. If contrary medical evidence is presented, the Administrative Law Judge must decide which evidence is most persuasive.

In Ira A. Watson v. Hamilton, Ky., 1999-SC-1155-WC, the Supreme Court considered an award of income benefits based upon a total and permanent occupational disability under the provisions of 1996 House Bill 1. The Court held that it is proper for the Administrative Law Judge to consider factors such as the worker's post injury physical, emotional, intellectual and vocational status, and how those factors interact, in determining whether he retains a partial or total occupational disability. Consequently, principles set forth in Osborne v. Johnson, Ky., 432 S.W. 2d 800 (1968), remain viable in determining whether a worker's occupational disability is total.

In Commonwealth of Kentucky, Transportation Cabinet, v. Guffey, Court of Appeals 1999-000753-WC, the court considered the meaning of the "natural aging process", as referenced in KRS 342.0011(1). The Court held that when a claimant has degenerative changes which are dormant and non-disabling, but are subsequently aroused by a work related trauma, that does not constitute "natural aging". Rather, the impairment arising from the arousal of the pre-existing dormant condition remains compensable. This decision is currently on appeal to the Kentucky Supreme Court.

In Reker v. The Traveler's Indemnity Co., Ky. App., 1999 CA 000061 it was held that an injured worker is entitled to bring a concurrent civil action for damages against her employer's compensation carrier for unfair claims settlement practice. The court reasoned that since the workers' compensation UCP provision provides only an administrative remedy, no part of which is specifically payable to the worker, a civil cause of action exists for the benefit of the injured party. The case is currently on appeal to the Kentucky Supreme Court.

# WHAT TO LOOK FOR...



## **DEPARTMENT OF WORKERS CLAIMS**

### **HB 992 CLAIMS PROCEDURES**

#### **IMPLEMENTATION PLAN**

On April 21, 2000 Governor Paul E. Patton signed into law House Bill 992 which became effective July 14, 2000 and amended the Workers' Compensation Act [KRS Chapter 342] in several areas. Significant changes include:

- Increased Permanent Partial Disability Benefits
- Greater Payments for Fatalities
- Enhanced Penalties for Safety Violations Causing Injury
- More Frequent Reopening Opportunity
- Reduction in the levels of Adjudication

Changes in benefit levels are largely self-implementing and require little activity by the Department of Workers Claims, other than revision of printed resource materials and reprogramming of information system functions. To the contrary, legislative alteration of the workers' compensation claims adjudication mechanism necessitated immediate and multi-faceted action by the Department.

HB 992 eliminates arbitration as the initial step in the claims resolution process and essentially restores the adjudication mechanism existing prior to the adoption of HB 1 in December 1996. Arbitration personnel were eliminated while the number of administrative law judges was increased.

HB 992 necessitated revamping of the regulations governing practice and procedure on an emergency basis. Obviously, the legislative goal was to remove what it viewed as a cumbersome, time-consuming step in the claims resolution process. DWC was immediately charged with the responsibility of initiating changes which indeed streamlined, rather than delayed, the resolution of workers' compensation claims.

The implementation plan addressed the elimination of arbitration and outlined the policies and practices to be utilized to facilitate an orderly and expeditious transfer of first level claims adjudication responsibility from arbitrators to administrative law judges.

The plan was developed with cognizance of the fact that the arbitration process on average involved the passage of ninety days from assignment of claims to an arbitrator to rendition of an arbitrator's benefit review determination. Given the additional facts that arbitrators were to have no authority after July 14, 2000 and that it was most desirable that arbitrators conclude their work on pending claims before July 1, no new claims assignments were made to arbitrators after March 28, 2000.

## ANNUAL REPORT FISCAL YEAR 1999-2000

### NEW CLAIMS ASSIGNMENT

All new and reopened claims that had not been assigned for arbitration as of March 28 were transferred to an ALJ. The Commissioner issued an order designating the ALJ, setting the time of the benefit review conference under HB 992 (synonymous with pre-hearing conference) and establishing the time frame for proof taking. Parties were granted 45 days to take proof, defendants only 30 days thereafter, followed by 15 days for claimant's rebuttal. Generally, benefit review conferences are held during the second week of the month, approximately 90 days after claim filing. Hearings are held during the fourth week of the month. In July 2000, a period of transition occurred and ALJs conducted pre-hearing conferences during both the first and second weeks of the month.

### TRANSFER OF PENDING ARBITRATOR CLAIMS

Arbitrators and ALJ's acting as arbitrators did not conduct benefit review conferences (BRC) under existing law after June 1, 2000. Claims in which the BRC would have otherwise been held after June 1, 2000 were transferred by the arbitrator to an ALJ. The Commissioner assigned these claims to an ALJ and issued the scheduling order described above.

Claims pending before an ALJ acting as arbitrator upon which a BRC would otherwise be conducted subsequent to June 1, 2000, were transferred from the ALJ acting as an arbitrator to the same ALJ acting in that capacity for ultimate resolution. That ALJ issued in a timely manner orders necessary for resolution, including the transfer order, a proof taking schedule and designation of the time and place of the benefit review conference (i.e. pre-hearing conference).

### ARBITRATION CLAIMS IN ABEYANCE

Claims which were in abeyance before an arbitrator as of June 15, 2000 were transferred to an ALJ. Claims abated before an ALJ acting as an arbitrator were transferred by the ALJ acting as an arbitrator to him/herself in the ALJ capacity.

### MISCELLANEOUS MATTERS

Arbitrators continued with disposition of claims, but issued no benefit review determinations after June 15, 2000. They addressed all petitions for reconsideration before July 14, 2000.

## **DEPARTMENT OF WORKERS CLAIMS**

### **MISCELLANEOUS MATTERS**

HB 992 re-created the Workers' Compensation Board as of July 15, 2000. There was an interval of 15 days commencing July 1, 2000 when the Workers' Compensation Board was no longer in existence. However, the absence of the WCB for 15 days did not impact procedures for filing appeals from ALJ decisions.

A committee representative of workers' compensation practitioners and adjudicators met to consider rule changes and to make recommendations to the Commissioner. The Commissioner affected practice rules, fully implementing the provisions of HB 992 on an emergency basis. Actuaries have projected that greater income benefits, greater attorneys' fees and wider opportunities for reopening provided by HB 992 will give rise to greater utilization of the workers' compensation program and increase claims filings.

The General Assembly took increased utilization into account by authorizing in HB 992 as many as six additional ALJ's. Claims projections were analyzed by the Commissioner and he certified the number of ALJ vacancies (3) to be filled in order to meet the needs of the program. The Workers' Compensation Nominating Commission met and made recommendations in regard to the ALJ vacancies.



# CLAIMS ADJUDICATION TIMELINE



**DEPARTMENT OF WORKERS CLAIMS**

**ANNUAL REPORT FISCAL YEAR 1999-2000**

# DEPARTMENT OF WORKERS CLAIMS

## SCHEDULE OF WEEKLY WORKERS' COMPENSATION BENEFITS 2001

TYPE OF DISABILITY SECTION OF STATUTE	FOR INJURIES OCCURRING							
	01-01-96 thru 12-31-96	01-01-96 thru 12-11-96	12-12-96 thru 12-31-96	01-01-97 thru 12-31-97	01-01-98 thru 12-31-98	01-01-99 thru 12-31-99	01-01-00 thru 12-31-00	01-01-01 thru 12-31-01
APPLICABLE AVERAGE WEEKLY WAGE OF THE STATE	\$415.94 (1992)	\$415.94 (1992)	\$415.94 (1992)	\$447.03 (1995)	\$465.36 (1996)	\$487.20 (1997)	\$509.03 (1998)	\$530.07 (1999)
<b>DEATH (KRS 342.750)</b>								
a. Widow or widower with no children-50% of average weekly wage of deceased- subject to the following:								
<b>MAXIMUM</b>	\$207.97	--	--	\$223.52	\$232.68	\$243.60	\$254.51	\$265.04
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
b. Widow or widower with children living in the home- 45% of average weekly wage of deceased, plus 15% for each child--subject to the following:								
<b>MAXIMUM</b>	311.96	--	--	335.27	349.02	365.40	381.77	397.55
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
c. Widow or widower with children <b>not</b> living in the home—40% of average weekly wage of deceased, plus 15% for each child--subject to the following:								
<b>MAXIMUM</b>	311.96	--	--	335.27	349.02	365.40	381.77	397.55
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
d. One child, <b>no</b> widow or widower- 50% of average weekly wage of deceased--subject to the following:								
<b>MAXIMUM</b>	207.97	--	--	223.52	232.68	243.60	254.51	265.04
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
d(1) More than one child, <b>no</b> widow or widower-50% of average weekly wage of deceased for the first child with an additional 15% of average weekly wage of deceased for each additional child—subject to the following:								
<b>MAXIMUM</b>	311.96	--	--	335.27	349.02	365.40	381.77	397.55
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01

## ANNUAL REPORT FISCAL YEAR 1999-2000

TYPE OF DISABILITY SECTION OF STATUTE	FOR INJURIES OCCURRING							
	01-01-96	01-01-96	12-12-96	01-01-97	01-01-98	01-01-99	01-01-00	01-01-01
	thru 12-31-96	thru 12-11-96	thru 12-31-96	thru 12-31-97	thru 12-31-98	thru 12-31-99	thru 12-31-00	thru 12-31-00
e. Dependent parents- 25% of average weekly wage of deceased to each parent-- subject to the following:								
<b>MAXIMUM</b>	311.96	--	--	335.27	349.02	365.40	381.77	397.55
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
f. Dependent brothers, sisters, grandparents and grandchildren- 25% of average weekly wage of deceased to each dependent-- subject to the following:								
<b>MAXIMUM</b>	311.96	--	--	335.27	349.02	365.40	381.77	397.55
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
<b>THE ABOVE IS SUBJECT TO THE MAXIMUM OF 75% OF THE AVERAGE WEEKLY WAGE OF THE DECEASED.</b>								
<b>TEMPORARY AND PERMANENT</b>								
<b>TOTAL KRS 342.730(1)(a)</b>								
66 2/3% of average weekly wage of employee--subject to the following:								
<b>MAXIMUM</b>	415.94	--	--	447.03	465.36	487.20	509.03	530.07
<b>MINIMUM</b>	83.19	--	--	89.41	93.07	97.44	101.81	106.01
<b>PERMANENT PARTIAL FOR</b>								
<b>INJURIES OCCURRING BEFORE 12-12-96</b>								
(To the body as a whole) KRS 342.730 (1) (b)								
66 2/3 % of average weekly wage of employee-- subject to the following:								
<b>MAXIMUM</b>	--	311.96	N/A	N/A	N/A	N/A	N/A	N/A
<b>MINIMUM</b>	--	NONE	N/A	N/A	N/A	N/A	N/A	N/A
<b>RETRAINING INCENTIVE BENEFITS</b>								
<b>KRS 342.732(1)(a)</b> 66 2/3% of average weekly wage of employee--subject to the following:								
<b>MAXIMUM</b>	--	155.98	311.96	335.27	349.02	365.40	381.77	397.55
<b>MINIMUM</b>	--	NONE	NONE	NONE	NONE	NONE	NONE	NONE

## DEPARTMENT OF WORKERS CLAIMS

TYPE OF DISABILITY SECTION OF STATUTE	FOR INJURIES OCCURRING							
	01-01-96	01-01-96	12-12-96	01-01-97	01-01-98	01-01-99	01-01-00	01-01-01
	thru 12-31-96	thru 12-11-96	thru 12-31-96	thru 12-31-97	thru 12-31-98	thru 12-31-99	thru 12-31-00	thru 12-31-01
<b>PERMANENT PARTIAL FOR INJURIES OCCURRING AFTER 12-11-96</b>								
<b>KRS 342.730(1)(b), (1)(c)2,&amp;(1)(d)</b>								
99% of 66 2/3% of average weekly wage of employee subject to the following:								
<b>MAXIMUM</b>	--	N/A	<b>311.96</b>	<b>335.27</b>	<b>349.02</b>	<b>365.40</b>	<b>381.77</b>	<b>397.55</b>
<b>MINIMUM</b>	--	N/A	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>
<b>PERMANENT PARTIAL FOR INJURIES OCCURRING AFTER 12-11-96</b>								
<b>KRS 342.730 (1)(c)1,&amp;(1)(d)</b>								
When the employee does not retain physical capacity to return to type of work performed at time of injury--								
99% of 66 2/3% of average weekly wage of employee subject to the following:								
<b>MAXIMUM</b>	--	N/A	<b>415.94</b>	<b>447.03</b>	<b>465.36</b>	<b>487.20</b>	<b>509.03</b>	<b>530.07</b>
<b>MINIMUM</b>	--	N/A	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

The Cabinet for Workforce Development has certified that the average weekly wage of Kentucky, for the calendar year 1999 was \$530.07. Based upon that information and in accordance with KRS 342.143, the following determinations are made.

1. The increase in maximum income benefits under all provisions of the Workers Compensation Act for the year 1999 over the year 1998 did amount to \$2.00 or more; therefore, the maximum weekly indemnity benefits for calendar year 2001 shall be \$530.07.
2. There was an increase of \$1.00 or more in minimum income benefits; therefore, the minimum weekly indemnity benefits under all provisions of the Act shall be \$106.01 for calendar year 2001.

*NOTES*



## **Key Personnel\***

\* at time of publication

Walter W. Turner, Commissioner	(502) 564-5550, Ext. 461/421
Willie H. Lyle, Deputy Commissioner	(502) 564-5550, Ext. 412
Dwight Lovan, Chairman, Workers' Compensation Board	(502) 564-6209
Sheila Lowther, Chief Administrative Law Judge	(502) 564-5550, Ext. 422
Steve Cox, General Counsel	(502) 564-5550, Ext. 498
Gary Davis, Director, Division of Security & Compliance	(502) 564-0905, Ext. 403
Beverly Goodwin, Coverage Branch Manager	(502) 564-0905, Ext. 404
Steve Taluskie, Self-Insurance Branch Manager	(502) 564-0905, Ext. 411
Barbara Rash, Enforcement Branch Manager	(502) 564-0905, Ext. 424 OR (800) 731-5241
Deborah Wingate, Director, Division of Information & Research	(502) 564-5550, Ext. 423
Diane Roush, Records Branch Manager	(502) 564-5550, Ext. 415
Research Specialists:	
Pam Gilbert	(502) 564-5550, Ext. 489
Dawn Sullivan	(502) 564-5550, Ext. 483
EDI Administrator/Webmaster: Preston Gorman	(502) 564-5550, Ext. 426
Cathy Costelle, Director, Division of Ombudsmen and Workers' Compensation Specialist Services	(502) 564-5550, Ext. 559
Andrew Manno - Chief Specialist	(502) 564-5550, Ext. 558
Ingrid Bowling - Managed Care	(502) 564-5550, Ext. 449
Oscar Morgan - Vocational Rehabilitation	(502) 564-5550, Ext. 544
Dianna Rose, Appeals Branch Manager	(502) 564-5550, Ext. 467
Ora Burge, Claims Processing Branch Manager	(502) 564-5550, Ext. 534
Open Records: Carol Stevens	(502) 564-5550, Ext. 429

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Medical Schedulers (502) 564-9533	Vocational Rehabilitation (502) 564-9533

